1950.

File No. O Lotteries & Prize Competition/50

Legal Department.

H **BRANCH**

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Subject:—

"Opinions under the Bombay Lotteries and Prize Competition Control and Tax Act 1948.

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File No. O Lotteries & Prize competition/50

432-A

C O N T E N T S.

Legal Department File No. O. Lotteries and Prize Competition/50.

Sr. No.	Compilation No.	Subject.	Pages.
	O. Lotteries Prize Competition 1950.	Opinions under the Bombay Lotteries and Prize Competition Control and Tax Act, 1948.	
1.	On. 7635 6-6-1950.	Whether bringing money won of lotteries outside the Province can be made penal.	1.
2.	On. 4932 11-4-50	Sec 13(2). Application of ____ to the Cross-word Competition in and the EVE's WEEKLY and leaving the party to his legal remedies.	3-5.
3.	On. 9864 7632 ~~13~~ .7.50	Whether the prize Competitions would require the licensed even though no enhance fee was charged the fees is recovered in the price of the paper itself.	7.
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Legal Department.

The question referred to the Legal Department for advice is whether bringing money won by lotteries outside the Province can be made penal.

It would appear from clause 9(2) of the Madras Lotteries Bill that a provision has been made therein that any money or valuable thing won as a prize in the lotteries promoted elsewhere that in the Province shall be liable to be forfeited to the Provincial Government if the prize is brought into the Province Presumably, Secretary , H.D. has in view this provision of the Madras Lotteries Bill. If the intention is to enact a provision on the lines of clause 9(2) of the Madras Lotteries Bill, it would be first necessary to make possession or purchase of a foreign lottery ticket an offence. After this is done a provision as contemplated can be inserted on the lines of sub-section (3) of section 30 of the English Betting and Lotteries Act, 1934. Thus a provision can be made empowering a Court before which a person is proved to have committed an offence of possessing or purchasing a foreign lottery ticket to forfeit any money to valuable thing won as a prize by such person on such a ticket and brought into the State. But before such a provision is enacted it will be necessary to consider from the administrative point of view whether it would be possible to prove in a given case that the money brought by aperson within the State of Bombay was won by him on a lottery promoted in a foreign State. It is possible that there may be practical difficulties in proving this and therefore, no such power has been taken in the English Act referred to above.

Sd. J.R.Dhurandhar.
5/6

Additional Secretary to Government.

U.R. to H.D. no. 7635 dated the 6th June 1950

Bombay Lotteries and Prize Competition Control and Tax Act, 1948, Sections 7,12(1)(b), 13(2)

Crossword Competition in the Eve's weekly

R.L.A. opinion No.3565 dt. 30-9-1940.

It appears that the EVE's WEEKLY were given a licence for a Cross-word Competition to be published in the EVE's WEEKLY. There was not entrance fee but competitors were required to submit an entry from giving their names and addresses to be cut out from the EVE's WEEKLY. The prizes to be given away amounted to Rs. 500/-. The Managing Director of the EVE's WEEKLY was asked to pay a tax of Rs. 125/- being the amount calculated at 25% of the prize amount. He has paid the amount but has requested for a refund of the same alleging that "There is no entrance fee in whatever from attached to our Cross-word which is only an editorial feature and the prize money is merely offered to stipulate public interest. We derive no monetary benefit from this competition, the sales do not necessarily go up because of it, and even of they did, they would be of no financial use as our main source of income lies in advertisement receipts. As the cost of production is much more than 4 annas per copy, we naturally do not expect to make any profit on the sales." Secretary, Home Department considers that it will be best to hold that section 13(2) applies and leave the party to his legal remedies. R.L.A. is requested to advise.

It is a general principle of interpretation of Statutes that the Statutes which impose pecuniary burdens are subject to the same rule of strict construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties (see Maxwell p. 250). The taxing provision is contained in section 12(1) of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. Clause (b) of that provision enacts

that there shall be levied in respect of every prize competitio
— ons for which a licence has been obtained under section 7 a
tax at such rate not exceeding 25% of the total sum received in
respect of such competitions as may be specified by the provin
cial Government in a notification in the official Gazette."
It is clear from this provision that the tax has to be assess
ed on the total sum received in respect of such competition.
If no sum is received in respect of such competition, obviously no tax
can be assessed nor could any liability for payment accrue.
The Managing Director of the EVE's WEEKLY asserts that there
was no entrance fee in whatsoever form and prize money
was merely offered to stimulate public interest. If so, no
sum was received for the Cross-word competition published in
the EVE's WEEKLY and no tax would be payable. If, in fact,
there was no entrance fee at all,, the question of maintaining
accounts under section 13 would not arise. R.L.A.'s opinion
No.8565, dated the 30th September 1940 can be distinguished
that opinion was based on the assumption that the value of the
prizes must have been included in the price of the articles.
There is no scope for any such assemption in this case. Since
it is not demonstrated that the price of the paper was raised
soas to cover the value of the prizes. In a case of this kind
the levy cannot be based upon the assumption of national recei
ipts being equivalent to the prize money. If in cases where no-
no money is received in respect of a competition tax is to be
levied on the assumption that the receipt must be at least
equal to the amount of the prize money, the Act will have to
be amended.

Sd. P.M.Lad.
15/4

Remembrancer of Legal Affairs,

U.R. to H.D.No. 4932, dated the 11th April 1950

VGP. 29-6-56.

Office of the R.L.A.

Bombay Lotteries and Prize Competitions Control and Tax Act, 1948

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R.L.A's opinions Nos. 2685 & 4932 dt. 9.3.49 and 11-4-50 respectively.

There is no conflict in the opinions of the Remembrancer of Legal Affairs No. 2685 dated the 9th March 1949 and No. 4932, dated the 11th April 1950. Opinion No. 2685 dated the 9th March 1949, was confined to the question involved in the note of Secretary, Home Department namely, whether the prize competitions pointed out by the District Magistrate would require to be licensed even though no entrance fee was charged. That question was answered by the Remembrancer of Legal Affairs in the affirmative and the R.L.A.'s opinion did not extend to the last sentence of the note of Secretary, Home Department namely, "It can be argued that the fee is recovered in the price of the paper itself;" as that argument was not deemed a necessary basis of the answer.

Sd. P.M.Lad.
12/8

Remembrancer of Legal Affairs.

H.R. to H.D.No. 9864, dated the 13th July 1950

VGP. 29-6-56.

L.D.R.I.No. 6985 dated the 22.4.1950

Submitted.

A copy of opinion No. SB 8565, dated 30.9.1940 was forwar ded with this office U.R. No. 5041 dated 13.4.1950 to H.D. (H) as desired by that Department.

In view of opinion No. 4932, dated 11-4-1950 H.D. thinks that no tax would be payable in respect of the Hamam Soap Con test as the prige of Hamam soap was not increased for the pur poses of the contest. R.L.A. has been requested to confirm the view taken by H.D.

VGP. 29-6-56.

Office of the R.L.A.

The view taken by the Home Department in its office note dated 19-4-1950 is correct.

Sd. P.M.Lad.
12/7

Remembrancer of Legal Affairs.

U.R. to H.D.No. 9863, dated the 13th July 1950.

VGP. 29-6-56.

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Submitted with reference to Secy. H.D's note at p. 3 ante. The question for the consixxx ideration of the R.L.A. is whether the Scheme proposed by the B.E.S.T. Undertaking is a lottery. The Proposal is to give money prizes of varying values every quarter to holders of bus and tram tickets. The numbers of the luckey tickets will be selected (arbitrarily) in advance and deposited either with the bankers of the Undertaking or with some respon sible citizen such as the Mayor or the Sheriff of Bombay.

VGP. 29-6-56.

Office of the R.L.A.

The proposed scheme, unless specially authorised by the State Government under section 32(C), would be an unlawful lottery within the meaning of section 3 of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948.

Sd. P.M.Lad.
26/8

Remembrancer of Legal Affairs.

U.H. to H.D. No. 12245 dated the 28th August 1950

VGP. 29-6-56.

No. 12564
Office of the
Remembrancer of Legal Affairs.
Bombay Castle (Bombay No. 1.), 1st August 1950

From

Shri P.M.Lad, I.C.S.,
Remembrancer of Legal Affairs,
Bombay.

To

The District Magistrate,
Kolhapur.

Subject :- Bombay Lotteries and Prize Competition and Control & tax Act, 1948, Action against the Pro. Bombay General Stores, Kolhapur, under the -

Sir,

With reference to your letter No. D.C.VII -2553/50 on the subject noted above, I have the honour to forward herewith copy of the opinion of the Remembrancer of Legal Affairs recorded in the matter.

Yours faithfully,

for Remembrancer of Legal Affairs.

VGP. 29-6-50.

Copy of the opinion of the Remembrancer of Legal Affairs.

" "Competition" means "rivalry, striving against each other for getting something desired or doing some act in the best manner possible" (See Iyer's Law Lexicon). If as stated by the District Superintendent of Police, Kolhapur, in the present case the holder of 25 coupons of one rupee each issued for increasing the sales, is entitled to get articles of 6 annas, there is no competition within the meaning of Section 2(d) of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 and the provisions of that Act would not be attracted."

VGP. 29-6-56.

Office of the R.L.A.

The Bombay Lotteries and Prize Competitions Act, 1948.

Sec. 2(d).

The definition of "Prize Competition" in section 2(d) of the Bombay Lotteries and Prize Competitions Act, 1948 being inclusiv even if the s olution is prepared after the receipt of entries, the competitors would, in the Words of Lord Hewart C.J. in coles V. Odhams Press Ltd. 1936 I.K.B. 416 at page 426, be still taking blind shots at a hidden target and consequently it would be a prize competition within the meaning of section 2(d). The view taken by Secretar Home Department is correct.

Sd. P.M.Lad.
29/9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 13805 dated the 30th Sept 1950.

VGP. 29-6-56.